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**(2005) 03 RAJ CK 0043**

**In the Rajasthan High Court**

**Case No : Civil Special Appeal (Writ) No. 551 of 2004**

Mamdin Khan

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Another

RESPONDENT

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**Date of Decision : 24-03-2005**

**Acts Referred:**

**Citation : (2005) 2 RLW 1464 : (2005) 3 WLC 123**

**Hon'ble Judges : V.K. Bali, J; Harbans Lal, J**

**Bench : Division Bench**

**Advocate : Rajendra Soni, for the Appellant; O.P. Sharma, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

V.K. Bali, J.—Challenge in the present D.B. Civil Special Appeal is to the order passed by the learned Single Judge dated 12.2.2004 vide which CWP No. 1188/98 filed by the appellant was dismissed.

2. Briefly put, the facts of the case reveal that the petitioner was dismissed from service vide order dated 6.8.81. He challenged the order aforesaid by a civil suit which was allowed. Appeals carried against the judgment and decree passed by the Trial Court were dismissed. However, the respondent Corporation was given opportunity to hold fresh enquiry after giving proper opportunity of hearing to the petitioner. Consequent upon fresh enquiry the charges levelled against the petitioner were held not substantiated but the disciplinary authority did not agree with the findings recorded by the Enquiry Officer and after giving a show cause notice to the petitioner, held that the charges that were the subject matter of the departmental enquiry, stood proved. Taking into consideration the past record of the petitioner, the disciplinary authority however, imposed punishment of stoppage of two grade increments with cumulative effect vide order dated 11.9.97. It is this order, which was under challenge before the learned Single Judge, with the result already indicated above.

3. Learned counsel appearing for the appellant contends that when a Disciplinary

Authority may disagree with the findings recorded by the Enquiry Officer, the Disciplinary Authority is bound to record tentative reasons and give to the delinquent an opportunity so that he is able to make a representation against the same and then to record its ultimate findings. For his aforesaid contention, learned counsel relies upon a judgment of the Supreme Court in *SBI and Ors. v. Arvind K. Shukla* (2001 (4) SC 415). The facts of the case in *SBI and Ors. v. Arvind K. Shukla* (supra), reveal that an enquiry was conducted against the delinquent officer of the Bank in respect of some charges. The Enquiry Officer came to the conclusion that whereas one charge was proved, the other charges were only partly proved. On receipt of findings of the Enquiry Officer, the Disciplinary Authority re-examined the material and did not agree with the conclusions of the Enquiry Officer on various charges. The Disciplinary Authority, on the other hand, came to the conclusion that all charges were fully proved. Taking into account the gravity of the charges, the Disciplinary Authority recommended the case to the Appointing Authority for infliction of major punishment. The Appointing Authority terminated services of the delinquent servant who preferred an appeal which was dismissed. These orders were challenged before the High Court and the learned Single Judge came to the conclusion that the non-furnishing of the reasons, which weighed with the Disciplinary Authority to differ with the findings of the enquiring officer, to the delinquent is fatal and vitiates the ultimate order of punishment. The writ petition was thus allowed. The Bank assailed the order by preferring an appeal but the division bench dismissed the same. It is, in these circumstances, that the Bank filed an appeal before the Hon"ble Supreme Court. The only question that came to be debated was whether in a case where the Disciplinary Authority disagrees with the enquiring officer on certain articles of charges and before it records its findings on such charges, is it duty bound to record its tentative reasons for such dis-agreement and give the same to the delinquent officer and an opportunity to represent, before it ultimately records its findings. Supreme Court answered the question against the Bank in view of its judgment in *Punjab National Bank and Ors. v. Kunj Behari Misra* (1998 (5) SC 548).

4. The contention of the learned counsel, as noted above, in view of the authoritative pronouncement of the Supreme Court in *Punjab National Bank and Ors. v. Kunj Behari Misra* (supra), has thus necessarily to be accepted. No judgment taking a contrary view has been cited before us by the learned counsel representing the respondent.

5. The position of law, as mentioned above expart, it appears to us that the impugned orders are required to be set aside on yet another ground that while issuing notice to the petitioner to appear and clarify the position, the Disciplinary Authority mentioned that if he shall not appear then it shall be construed as if he had nothing to say and that he agrees with the report of the Enquiry Officer. Far from telling the petitioner that the Disciplinary Authority was not in agreement with the findings recorded by the Enquiry Officer, the petitioner was ultimately told that if he was not to appear then it shall be considered as if he was agreeing

with the report of the Enquiry Officer. The report of the Enquiry Officer was surely in favour of the petitioner. He had nothing to say in so far as the findings recorded by the Enquiry Officer were concerned. Even though in the earlier part of the notice, it has been mentioned that if the petitioner was to clarify the position, he would appear at 11 a.m. on 8.8.1997 before the Disciplinary Authority but what clarification could have been given by the petitioner when the report of the Enquiry Officer was in his favour. Be that as it may, there was not a word mentioned in the notice that the Disciplinary Authority was in disagreement with the findings recorded by the Enquiry Officer. Naturally, in the circumstances aforesaid, no tentative reasons for disagreement were also given.

6. In view of our discussion made above, we allow this appeal. The impugned order dated 12.2.2004 passed by the learned Single Judge is set aside. The order dated 11.9.97 challenged in the writ petition vide which the Disciplinary Authority had imposed punishment of stoppage of two grade increments with cumulative effect is also set aside, leaving however, the respondent Department to proceed against the petitioner in accordance with law, if permissible at this stage. In view of the fluctuating fate of the parties, they are left to bear their own costs.